Office-Supreme Court, U.S.
FILED
JUL 20 1981
ALEXANDER L. STEVAS,
CLERK

81-1241

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

RICHARD N. HILL, JR.,

Petitioner,

vs.

CHARLOTTE G. HILL,

Respondent.

On Petition for a Writ of Certiorari to
The Supreme Court of Louisiana

PETITION FOR A WRIT OF CERTIORARI

JAY C. ZAINEY
Attorney for Petitioner
McPHERSON & ZAINEY
419 Carondelet Street
New Orleans, LA 70130
Telephone: [504] 581-1973

QUESTIONS PRESENTED FOR REVIEW

1. Does the Full Faith and Credit Clause of the Constitution require the forum State, in this case Louisiana, to recognize and enforce the executory judgment of a sister State, Illinois, fixing the amount of arrearages and interest due upon past due child support owed under an Illinois judgment when, under the law of the forum state, a suit to recover arrearages in alimony beyond three years would be prescribed by the three year statute of limitations for recovery of arrearages of alimony?

2. Does the Full Faith and Credit Clause of the Constitution establish a rule of evidence, in which instance the judgment creditor must find a court into which he may bring his cause of action before he may seek to have a foreign judgment recognized and enforced, or of jurisdiction, in which instance the courts

of all of the States, no matter what their statutes of limitations, would have to open their courts to foreign judgment creditors and permit them to litigate matters which would otherwise be prescribed under the law of the forum so long as the rights under the said foreign judgment had not expired under the law of the rendering State?

TABLE OF CONTENTS

Questions Presented for Review	1
Authorities Cited	iii
Opinion Below	2
Grounds on Which Supervisory Jurisdiction of this Court is Invoked	3
Constitutional & Statutory Provisions Relied Upon	4
Statement of the Case	6
Reasons for Allowing the Writ	23
Conclusion	37
Proof of Service	40
Appendix A	A-1
Appendix B	A-6
Appendix C	A-7

TABLE OF AUTHORITIES CITED

CASES

Andrews v. Andrews, 188 U.S. 14 17, 29

Anglo-American Provision Co. v. Davis Provision Co., 191 U.S. 373 (1903) 17, 29

Baldwin v. Baldwin, 337 So.2d 245 (La.App. 3 Cir. 1976) 24

Ball v. Haughton, 17 Ill.Dec. 888, 60 Ill.App.2d 562, 377 N.E.2d 78 (Ill.App. 1978) 32

Broday v. Broday, 360 So.2d 645 (La.App. 3 Cir. 1978) 26, 37

Broderick v. Rosner, 294 U.S. 629 (1935) 27, 28

Carroll v. Lanza, 349 U.S. 408 (1965) 37

Catlett v. Catlett, 412 P.2d 942 (Okl. 1966) 34

Coffee v. National Equipment Rental, Ltd., 9 Ariz.App. 249 (1969) 20

Crichton v. Succession of Crichton, 232 So.2d 109 (La.App. 2 Cir. 1970) 14

Fauntleroy v. Lurn, 210 U.S. 230 (1932) 20

Hall v. Copco Pacific, Ltd., 224 F.2d 884 (9 Cir. 1955) 36

Hampton v. M'Connel, 16 U.S. [3 Wheat] 234 (1818) 20

Haughton v. Haughton, 31 Ill.Dec. 183, 76 Ill.2d 439, 394 N.E.2d 385 (1979) 33

Hill v. Hill, 394 So.2d 676 (La.App. 4 Cir. 1981) 26

Hinds v. Primeaux, 367 So.2d 925 (Miss. 1979) 33

Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943) 16

Milliken v. Meyer, 311 U.S. 457 (1941) 14, 15

Missouri v. Lewis, 101 U.S. 22 18

Newhouse v. Newhouse, 271 Or. 109, 530 P.2d 848 (1975) 35

Reynaud v. Reynaud, 387 So.2d 1191 (La.App. 1 Cir. 1980) 24

Strickland v. Watt, 453 F.2d 393 (9 Cir. 1972) 35

Swain v. Swain, 339 So.2d 453 (La.App. 1 Cir. 1976) 27

United States v. Jacobs, 155 F.Supp. 182 (D.N.J. 1957) 37

Williams v. North Carolina, 317 U.S. 387 (1942) 20

Wells v. Simonds, 345 U.S. 514 (1953) 36

Wisconsin v. Pelican Ins. Co., 127 U.S. 265 17, 29

CONSTITUTIONAL AND STATUTORY AUTHORITIES

UNITED STATES CONSTITUTION:

Article IV, §1 4, 15, 26, 28

14th Amendment 28

LOUISIANA REVISED STATUTES:

La.R.S. 13:1641 et seq. 25

La.R.S. 13:1663 23

LOUISIANA CIVIL CODE:

Article 2541 5, 28

Article 3538 6

LOUISIANA CODE OF CIVIL PROCEDURE:

Article 2541 5, 25

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

RICHARD N. HILL, JR.,

Petitioner,

vs.

CHARLOTTE G. HILL,

Respondent.

On Petition for a Writ of Certiorari to
The Supreme Court of Louisiana

PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT:

Richard N. Hill, Jr., your petitioner in the above entitled cause, applies to this Honorable Court for a writ of certiorari to review the judgment and opinion of

the Louisiana Court of Appeal for the Fourth Circuit, rendered on January 13, 1981, rehearing denied, March 16, 1981, and the Order of the Supreme Court of Louisiana, dated May 6, 1981, denying petitioner's application for a writ of certiorari to review the judgment and opinion of the Louisiana Court of Appeal for the Fourth Circuit.

OPINIONS BELOW

No relevant written opinions were rendered by the Trial Court.

The opinion of the Louisiana Court of Appeal for the Fourth Circuit, reported at 394 So.2d 676, is annexed hereto as Appendix A, p. A-1, post.

No written opinion accompanied the denial of a timely application for rehearing in the said Court of Appeal. A copy of the post card notifying counsel of the Court's action on the petition for rehearing and that one of the three Judges of

the Panel hearing the appeal dissented from the denial of the petition for rehearing is annexed hereto as Appendix B, p. A-6, post.

The Supreme Court of Louisiana denied an application for writs of certiorari and/or review without a written opinion. The order denying same is set forth at Appendix C, p. A-7, post.

GROUNDS ON WHICH SUPERVISORY JURISDICTION OF THIS COURT IS INVOKED

The opinion of the Louisiana Court of Appeal for the Fourth Circuit was rendered on January 13, 1981, and entered in these proceedings on March 16, 1981, when a timely petition for rehearing was denied with one of the three-Judge Panel of the Court of Appeal dissenting without assigning written reasons therefor.

A timely application for a writ of certiorari to the Louisiana Court of Appeal for the Fourth Circuit was denied by

the Supreme Court of Louisiana on May 6, 1981. The Rules of the Supreme Court of Louisiana prohibit applications for rehearing from the denial of a supervisory writ.

Jurisdiction of this Honorable Court to review the judgment and opinion of the Louisiana Court of Appeal for the Fourth Circuit, the highest Court of the State of Louisiana to which petitioner had a right of direct appeal and the Louisiana Supreme Court having declined in its discretion to review the judgment below, is conferred by 28 U.S.C. §1257(3) since this case involves the proper application of the Full Faith and Credit Clause found in Article IV, §1 of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, §1, United States Constitution, provides:

> Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the

Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Congress, by 28 U.S.C. §1738, prescribed in relevant part:

* * * * * *

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge that the said attestation is in proper form.

Such * * * records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Article 2541, La.C.C.P., provides:

A party seeking recognition or execution by a Louisiana court of a judgment or decree of a court of the United States or a territory thereof, or of any other state, or of any foreign country must bring an ordinary proceeding against the judgment debtor in the proper Louisiana court, to

have the judgment or decree recognized and made the judgment of the Louisiana court.

A duly authenticated copy of the judgment or decree must be annexed to the petition.

La.R.S. 13:1663, provides:

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Part, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor. Acts 1977, No. 610, §1.

Article 3538, La.C.C., provides:

The following actions are prescribed by three years:

That for arrearages of * * * alimony * * *.

STATEMENT OF THE CASE

Mrs. Charlotte G. Hill, more than three years after entry of a default judgment against her former husband, petitioner herein, for arrearages of alimony fixed by the Circuit Court for the Sixth Judicial Circuit of Macon County, Illinois,

sought to have the said judgment recognized as the judgment of the 24th Judicial District Court in and for the Parish of Jefferson, State of Louisiana, the parish in which defendant-petitioner is domiciled in the State of Louisiana. That, pursuant to the law of the State of Louisiana, is a condition precedent to the enforcement of a foreign judgment, i.e., the judgment of a sister state.

In 1964, respondent abandoned petitioner and moved to Illinois. Petitioner obtained a judgment of separation in the Civil District Court for the Parish of Orleans on the ground of respondent's abandonment. No provision for alimony appears in that judgment.

In 1966, respondent brought a suit for divorce against petitioner, claiming that he had abandoned her; that a minor child, Richard N. Hill, III, was born of the marriage between petitioner and respon-

dent; and praying for child support. The Illinois Court granted respondent a divorce on the ground of abandonment and awarded her the sum of fifteen and no/100ths ($15.00) dollars per week child support for the minor child, Richard N. Hill, III.

In 1974, respondent brought suit in the same Illinois Court, claiming arrearage of the entire amount of the child support for the past six years. According to a judgment of the said Illinois Court rendered in those proceedings, petitioner was served a copy of the said complaint but did not appear in those proceedings. On October 11, 1974, the Circuit Court of the Sixth Judicial Circuit of Macon County, Illinois, entered a judgment against petitioner, declaring that petitioner owed respondent the sum of four thousand, ninety-two and no/100ths ($4,092.00) dollars for the past due partial support for Richard

N. Hill, III, and fixed the amount of four hundred forty-three and 86/100ths ($443.86) dollars as legal interest thereon, totalling four thousand, five hundred thirty-five and 86/100ths ($4,535.86) dollars. Judgment was rendered in that amount. No appeal was taken by petitioner from the said judgment.

On November 9, 1977, suit was filed in the 24th Judicial District Court in and for the Parish of Jefferson, State of Louisiana, seeking recognition and enforcement of the foreign judgment above described.

On December 21, 1977, petitioner filed a peremptory exception of prescription, urging that Article 3538, La.C.C., bars recovery of arrearages of alimony beyond three years. Respondent urged in opposition to petitioner's exception that the Full Faith and Credit Clause of the United States Constitution forced the Lou-

isiana courts to recognize and to give effect to the Illinois judgment. Respondent claimed in its Memorandum in Opposition to Peremptory Exception of Prescription, pp. 1-2:

> Defendant herein has filed a peremptory exception of prescription citing Louisiana Civil Code, Article 3538. Said exception is not valid in that under Article IV, Section 1 of the United States Constitution "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state..." No consideration of local policy or law can impair the force and effect that said full faith and credit clause requires be given to a money judgment rendered in a civil suit outside the state of its rendition. Magnolia Petroleum Company versus Hunt, 1944, 64 S.Ct. 208, 320 U.S. 430, 88 L.Ed. 149.

On February 14, 1978, petitioner's exception was overruled. On February 21, 1978, a judgment was signed by Honorable Louis DeSonier, Jr., Judge of the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, overruling the said peremptory exception of prescription.

The Court ordered that petitioner answer respondent's petition within a time prescribed by the Court, failing which the Court would enter a default judgment for respondent herein.

On June 20, 1978, petitioner filed an Answer, again urging the prescription of three years.

On April 10, 1979, respondent filed a motion for a summary judgment. On May 22, 1979, petitioner filed a countervailing affidavit, claiming that he had obtained the first judgment on the ground of abandonment in the courts of the State of Louisiana and that the Illinois judgment was therefore a nullity; that there is a serious question of the paternity of the said minor child; that plaintiff had waived child support payments while defendant was in the United States Army, between 1966 and 1968; and that between 1968 and 1971, petitioner made payments to his former

wife for support of the minor child, Richard N. Hill, III, and that these amounts were not included as credits in the amount of the Illinois judgment.

On January 10, 1980, respondent's affidavit, attesting that petitioner had paid her no portion of the judgment of the Circuit Court of the Sixth Judicial Circuit of Macon County, Illinois, was filed. Respondent did not dispute petitioner's contention that payment of child support between 1966 and 1968 had been waived or that petitioner had paid her child support between 1968 and 1971.

On January 25, 1981, the Trial Court granted respondent's motion for a summary judgment and entered judgment on behalf of respondent.

Petitioner appealed to the Louisiana Court of Appeal for the Fourth Circuit on the record made in the Trial Court. The Louisiana Court of Appeal affirmed the

judgment of the Trial Court on January 13, 1981, holding as follows (394 So.2d at 677):

> We can find no merit in defendant's argument that since LSA-C.C. art. 3538 bars arrearages of alimony by the prescription of three years, the trial court should have refused to recognize the Illinois judgment. This issue has been specifically addressed by the First Circuit in Swain v. Swain, 339 So.2d 453 (La. App. 1st Cir. 1976), wherein the court said at pages 455-456:
>
> > "The object of the plaintiff's suit was to annul portions of an obviously valid and final Florida judgment. However, it is axiomatic that a Louisiana court is powerless to annul the judgment of a sister state.
> >
> > "A Louisiana court is also powerless to deny a Florida judgment the full faith and credit which is accorded to it by Article 4, Section 1, of the United States Constitution unless the Florida court lacked jurisdiction over the parties or the subject matter involved in the controversy. Milliken v. Meyer 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1941); Crichton v. Succession of Crichton, 232 So.2d 109 (La.App. 2nd Cir. 1970), writs refused, 256 La. 274, 236 So.2d 39 (1970), U.S.

certiorari denied, 400 U.S. 919, 91 S.Ct. 172, 27 L.Ed.2d 159, U.S. rehearing denied, 400 U.S. 1002, 91 S.Ct. 449, 27 L.Ed.2d 453 (1971).

"On the facts of the record before us, the Florida court obviously had jurisdiction over both the parties and the subject matter, that is, the marriage that existed between the plaintiff and the defendant and the legal effects that flowed therefrom. * * *

"In view of the foregoing, the application of the full faith and credit clause to the instant case renders the courts of Louisiana powerless to deny the validity and effect of the Florida judgment.

* * * * *

"The courts of Louisiana are powerless to inquire into the merits of the cause of action or the validity of the legal principles on which the Florida court based its decision. U.S. Constitution, Article 4, Section 1; Milliken, supra."

Similarly, since this court can find no evidence that the Illinois court lacked jurisdiction over the parties or the subject matter involved in this controversy, the full faith and credit clause of the United States Constitution precludes our examination of the case on its merits.

In petitioner's application for rehearing of the appeal of this case, petitioner contended (Application for Rehearing, p. 4):

> This Court has misconceived the effect of the Illinois judgment and its role in these proceedings. The legal role of that judgment, consistent with Article IV, §1, United States Constitution, is merely that of evidence of the debt resulting from arrearages in child support. The Illinois judgment does not create a cause of action in Louisiana. The debt, of which the judgment is mere evidence, constitutes the cause of action. Suit upon such a debt is barred by the prescription of three years in the Courts of the State of Louisiana. Art. 3538, La.C.C.
>
> In the Court below, appellee placed great reliance upon the decision of Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943), reh. den., 321 U.S. 801 (1944), for the proposition that the Illinois judgment grants appellee certain rights to enforcement because the Constitution of the United States, in Article IV, §1, requires this State's courts to give full faith and credit to the judicial acts of another. The Illinois decision, however, cannot confer jurisdiction on the Courts of the State of Louisiana when this state's law would not permit similar suits by its own citizens. In Anglo-Ameri-

can Provision Co. v. Davis Provision Co., 191 U.S. 373 (1903), the State of New York had a procedural statute which prohibited suit between two non-resident corporations upon a cause of action which did not arise in New York. One foreign corporation filed suit against another to enforce a judgment of the State of Illinois. The Supreme Court of the United States, on writ of error from the judgments of the New York courts dismissing the suit, held that the Full Faith and Credit Clause of the Constitution does not confer jurisdiction upon the courts of the forumn state but is merely a rule of evidence. The Court gave the following explanation of the applicability of the Full Faith and Credit Clause (191 U.S. at 374):

> * * * [The Full Faith and Credit Clause] establishes a rule of evidence rather than of jurisdiction. Wisconsin v. Pelican Insurance Company, 127 U.S. 265; Andrews v. Andrews, 188 U.S. 14, 36. The Constitution does not require the state of New York to give jurisdiction to the supreme court against its will. If the plaintiff can find a court into which it has a right to come, then the effect of the judgment is fixed by the Constitutiuon and the act in pursuance of it which Congress has passed. Rev. Stat. 905 (U.S. Comp. St. 1901, p. 677)[now 28 U.S.C. 1738]. But the Constitution does not require the state to provide such a court. See Missouri v. Lewis, 101 U.S. 22,

> 30. If the State does provide a court to which its own citizens may resort in a certain class of cases, it may be that citizens of other states of the Union also would have a right to resort to it in cases if the same class. Blake v. McClung, 172 U.S. 239, 256. But that right, even when the suit was upon a judgment of another state, would not rest on the 1st section of article IV., on which alone the plaintiff relies or can rely, but would depend on the 2d section, entitling the citizens of each state to all privileges and immunities of citizens in the several states. * * *
>
> It is thus clear that procedural statutes of a state which would bar its own citizens from obtaining the relief sought in its courts bars a foreign citizen from achieving the same result and nothing in Article IV, §1 of the United States Constitution changes that.

Petitioner clearly presented to the Courts of the State of Louisiana the issue that the Full Faith and Credit Clause of the United States Constitution did not require the State of Louisiana, as the Louisiana Court of Appeal perceived and held in this case, to create for the respondent herein

a right to recover arrearages in alimony pursuant to an Illinois judgment when the laws of the State of Louisiana precluded suits for the collection of arrearages in alimony beyond three years. Petitioner urged upon the Louisiana Court of Appeal as follows (Application for Rehearing, pp. 5-6):

> To paraphrase the words of the United States Supreme Court in the Anglo-American Provision Co. case, supra, the appellee has not found a court into which it has a right to come and sue for arrearages in child support more than three years old. Art. 3538, La.C.C., bars such actions. The evidence of the debt sued upon, i.e., the Illinois judgment, itself shows that it was obtained more than three years prior to the filing of suit in Louisiana. It would therefore be inadmissible in an action to recover arrearages of alimony. Appellee has not sought arrearages during the three years next preceding the filing of her suit in the courts of this State. The judgment of the Illinois Court constituted her entire claim.

The identical points were raised in petitioner's petition for supervisory writs filed in the Supreme Court of Louisi-

ana and subsequently denied by that Court. Thus, the Federal questions presented by this petition have been presented to and adjudicated by the Louisiana courts and are ripe for review by this Honorable Court.

REASONS FOR ALLOWING THE WRIT

THE LOUISIANA COURTS HAVE APPLIED THE "FULL FAITH AND CREDIT" CLAUSE OF THE CONSTITUTION IN A MANNER INCONSISTENT WITH THE DECISIONS OF ITS SISTER STATES AND FEDERAL COURTS OF APPEALS WHICH HAVE CONSIDERED THE PRECISE QUESTION PRESENTED AND HAS DECIDED THIS CASE IN A MANNER INCONSISTENT WITH APPLICABLE OPINIONS OF THIS COURT

Louisiana and Illinois have both adopted the 1968 version of the Uniform Reciprocal Enforcement of Support Act (URESA). In Louisiana, claims for arrearages under a foreign judgment are allowed under La.-R.S. 13:1663, which provides:

> All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Part, including a proceeding for civil contempt. The defense that the

> parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor. Acts 1977, No. 610, §1.

The enforcement against a Louisiana resident of the obligation to pay arrearages of alimony due under a judgment of another State presupposes the existence of a valid "final" judgment fixing an award for child support. If the judgment of a sister state awarding alimony is not "final," Louisiana does not find itself obligated to give the foreign judgment "full faith and credit." Reynaud v. Reynaud, 387 So.2d 1191 (La.App. 1 Cir. 1980). Only "final" judgments of sister states will be recognized and enforced by the Louisiana courts. Ibid. See, also, Baldwin v. Baldwin, 337 So.2d 245 (La.App. 3 Cir. 1976). Final judgments, for purposes of recognition and enforcement in the Louisiana courts, may be either in the form of a foreign judgment fixing an award of ali-

mony which is not subject to modification in the rendering State or of a foreign judgment determining the extent of the debt resulting from accrued arrearages and making executory the original judgment fixing the award as to the extent of arrearages then owed. See Baldwin v. Baldwin supra. The suit in the instant case is of the latter kind.

Under the provisions of La.R.S. 13:1663, either of the above types of suits are suits brought to enforce the duty to pay arrearages and, as to obligees residing out of the State of Louisiana, are to be brought under the provisions of URESA, La.R.S. 13:1641 et seq.

Under Louisiana law, a foreign judgment is not recognized until an ordinary proceeding is brought against the judgment debtor in the proper Louisiana court to have the judgment or decree recognized and made the judgment of a Louisiana court.

Art. 2541, La.C.C.P. Until then, the foreign judgment is nothing more than evidence of the debt, although under the Full Faith and Credit Clause of the Constitution it is conclusive evidence so long as the foreign court had jurisdiction of the parties and subject matter. A suit brought to enforce a foreign executory judgment for arrearages of alimony is a suit upon the debt reflected by the executory judgment of the sister state.

Under Louisiana law, no such suit may be maintained in the Courts of Louisiana after three years. Art. 3538, La.C.C.

In the case of Broday v. Broday, 360 So.2d 645 (La.App. 3 Cir. 1978), the Court held that for Louisiana to apply its three year statute of limitations to bar enforcement of a California judgment would violate the requirements of Article IV, §1, United States Constitution that it give "full faith and credit" to the judi-

cial proceedings of California. For some reason not revealed in the opinion rendered by the Fourth Circuit Court of Appeal in the instant case, no reliance was placed upon Broday. Hill v. Hill, 394 So.2d 676 (La.App. 4 Cir. 1981). Instead, the Court below relied upon the opinion of the Louisiana Court of Appeal for the First Circuit, in Swain v. Swain, 339 So.2d 453 (La.App. 1 Cir. 1976), in which the Louisiana resident sought to "annul" a Florida judgment in the courts of Louisiana--an obvious transgression of the Constitution if successful. Suffice it to say at this point, petitioner did not seek to have the Illinois judgment annuled by his peremptory exception of prescription. All that was sought by that exception was to bar the respondent from having the stale Illinois judgment recognized and enforced against him by the Louisiana courts in violation of Louisiana's strong public

policy which bars access to its courts for the purposes sought in these proceedings by respondent.

In Broderick v. Rosner, 294 U.S. 629, 643 (1935), this Court stated:

> * * * A State may adopt such system of courts and form of remedy as it sees fit. It may in appropriate cases apply the doctrine of forum non conveniens. * * * But it may not, under the guise of merely affecting the remedy, deny the enforcement of claims otherwise within the protection of the full faith and credit clause, when its courts have general jurisdiction of the subject-matter and the parties. * * * (Emphasis added.)

This Court also acknowledged in Broderick "that the full faith and credit clause does not require the enforcement of every right which has ripened into a judwould be closed to its own citizens. That position is not required by Article IV, §1, U.S. Constitution, and would probably be violative of the Equal Protection Clause of the Fourteenth Amendment .ith regard to residents of the State of Louisiana.

In Anglo-American Provision Co. v. Davis Provision Co., 191 U.S. 373, 374 (1903), this Court held that the Full Faith and Credit Clause does not confer jurisdiction upon the courts of the forum state but is merely a rule of evidence which binds the courts of the forum state if the law of the forum state confers jurisdiction upon its courts and establishes or does not deny a right of action to the plaintiff which would be accorded to citizens of the forum state. Specifically, this Court said:

> * * * [The Full Faith and Credit Clause] establishes a rule of evidence rather than of jurisdiction. Wisconsin v. Pelican Insurance Co., 127 U.S. 265; Andrews v. Andrews, 188 U.S. 14, 36. The Constitution does not require the state of New York to give jurisdiction to the supreme court against its will. If the plaintiff can find a court into which it has a right to come, then the effect of the judgment is fixed by the Constitution and the Act in pursuance of it which Congress has passed. [* * * (now 28 U.S.C. §1738)]. But the Constitution does not require the

state to provide such a court. * * *

Respondent's right to come into the courts of Louisiana to enforce an executory judgment for arrearages of alimony is nonexistent because prescribed by the passage of three years from entry of the Illinois judgment. Therefore, there was no requirement that the Louisiana courts, against their will, open their doors and recognize and enforce the Illinois judgment in this case in derogation of its own statute limiting the pursuit of the remedy for past due alimony to a period of three years.

The cases are legion and unanimous, so far as petitioner has found, that when a cause of action arising under the statutory law of another state is brought, the law of prescription, i.e., the statute of limitations, of the forum state controls except where the limitations is a part of the statute conferring the rightof

action, in the latter event the cases holding the limitations to be part of the substantive law of the foreign state and part of the substantive right created by the statute under which the cause of action arises. That same body of law holds that in an original action brought in the forum state, the forum state will apply its own procedural laws even though it is bound under the Full Faith and Credit Clause to apply the substantive law of the State creating the right of action. The present case deals with a cause of action reduced to an executory judgment by the courts of a sister state, hence this argument will be confined at this point to a discussion of the cases in which the bar of prescription has been applied against the enforcement of executory judgments of a sister state which have not prescribed under the law of the state which rendered the judgment.

We submit it is very significant that the State of Illinois subscribes to the very point of law which petitioner urges. Ball v. Haughton, 17 Ill. Dec. 888, 60 Ill.App.2d 562, 377 N.E.2d 78 (Ill.App. 1978), rev'd on other grounds sub nom. Haughton v. Haughton, 31 Ill.Dec. 183, 76 Ill.2d 439, 394 N.E.2d 385, cert. den., 444 U.S. 1102 (1979). Thus, the respondent should have been put on notice that Louisiana might have had a specific time perijod within which she must have brought suit to register and enforce her judgment against petitioner in Louisiana. There is thus nothing unfair about applying Art. 3538, La.C.C., to bar her access to the courts of the State of Louisiana. In Ball v. Haughton, supra, the Illinois Court of Appeal applied that state's general statute of limitations to bar recovery of arrearages of alimony due under a California final judgment because it was not

sought within five years. The judgment creditor's successors (the judgment creditor died during the direct appeal) petitioned the Supreme Court of Illinois for leave to appeal the judgment of the Court of Appeal. The Illinois Supreme Court granted such leave and recognized the applicability of its State's statute of limitations but held that the tolling provisions of another Illinois statute which applied only to Illinois residents violated the Equal Protection Clauses of the Federal and Illinois Constitutions, hence the tolling provisions applied while the parties were out of the State of Illinois, thus making that appellant's suit timely and not prescribed. The point of the appellate decision was affirmed by the Illinois Supreme Court and the reversal was based on other grounds. Haughton v. Haughton, supra.

In Hinds v. Primeaux, 367 So.2d 925 (Miss. 1979), the Supreme Court of Mississippi applied its statute of limitations to a final judgment of the courts of Louisiana fixing alimony. The action was brought within the applicable statute of limitations and is cited only for the holding that the forum's statute of limitations controls.

In Catlett v. Catlett, 412 P.2d 942 (Okl. 1966), also an action to enforce an executory judgment of another state for arrearages of child support, the Supreme Court of Oklahoma held that Oklahoma's statute of limitations on recovery of arrearages under a foreign judgment controlled. Significantly, although the statute had been amended to permit registration and enforcement of judgments under URESA from one to three years at the time the suit was filed but the prior rights of the defendant had vested under a previous

one year statute, the Court held that the foreign judgment creditor's right of action had prescribed.

In Newhouse v. Newhouse, 271 Or. 109, 530 P.2d 848 (1975), the Supreme Court of Oregon held that the statute of limitations is procedural in nature, affecting the remedy and not the cause of action, and applied its own statute of limitations to bar recovery of arrearages of alimony under the executory judgment of a sister state.

In each of the above cases, the issue of the applicability of the Full Faith and Credit Clause to the forum state's statute of limitations was specifically considered and disposed of in the manner petitioner urges this Court to now hold.

In Strickland v. Watt, 453 F.2d 393 (9 Cir. 1972), in a proceeding to enforce a foreign judgment, the Ninth Circuit Court of Appeals held that the Full Faith

and Credit Clause does not compel the forum state to recognize another state's longer statute of limitations. In the face of the contention that the Full Faith and Credit Clause required application of the statute of limitations of the State whose judgment was sought to be recognized and enforced, the United States Court of Appeals for the Ninth Circuit looked to and applied the jurisprudence of the State of Arizona which required that the statute of limitations of the forum state be applied.

In Hall v. Copco Pacific, Ltd., 224 F.2d 884 (9 Cir. 1955), the Court held that the Full Faith and Credit Clause does not require a state to suspend application of its own statute of limitations and to thus give effect to a judgment of another State. The Ninth Circuit wrote:

> There is no merit in appellee's contention that the full faith and credit clause of the United States Constitution, Article IV, Section (1), requires any suspension of the

application of California's statute of limitations. See Wells v. Simonds, 345 U.S. 514 (1953). It was there held that the Constitution permits the forum state to apply its own statute of limitations even where the foreign statute creating the substantive right contains a "built in" period of limitation.

CONCLUSION

It is thus clear from the foregoing, contrary to the view expressed by the Louisiana courts in Broday v. Broday, supra, and implicit in the judgment below, that Louisiana does have the right and power to enforce its own statute of limitations and to require foreign judgment creditors to register their judgments upon arrearages of alimony within three years as provided under Louisiana law.

The foregoing is not to say that the Louisiana courts may not, as a matter of State policy, apply the statute of limitations of the rendering state rather than its own. Cf. Carroll v. Lanza, 349 U.S. 408, 413-414 (1965); United States

v. Jacobs, 155 F.Supp. 182 (D.N.J. 1957). But Louisiana has not reached that determination because of its erroneous view that it is bound to enforce a valid judgment of another state, any local statute of limitations otherwise applicable notwithstanding.

Petitioner respectfully submits that the jurisprudence of this Court clearly compels the conclusion he has urged throughout these proceedings, i.e., the Louisiana prescriptive statute is not required to be disregarded under the Full Faith and Credit Clause. Certainly, the applicable jurisprudence of other states and of the Ninth Circuit of the United States, cited above, confirms petitioner's conclusion. Of course, this Court is the final arbiter of the scope of the United States Constitution. If this Court's decisions are not sufficiently clear to compel the conclusion urged by petitioner, es-

pecially since so many courts of other States subscribe to the view urged by petitioner and none we have found differ therewith, this Court should grant a writ of certiorari, review the judgment of the courts below, and resolve this important recurring question of Federal constitutional law.

Respectfully submitted,

JAY C. ZAINEY
Attorney for Petitioner
McPHERSON & ZAINEY
419 Carondelet Street
New Orleans, LA 70130
Telephone: [504] 581-1973

PROOF OF SERVICE

BEFORE ME, the undersigned authority, personally came and appeared JAY C. ZAINEY, Esq., who, being by me first duly sworn, deposed and said that he is the attorney of record for the petitioner in the foregoing proceedings; that on July 16, 1981, he caused three copies of the foregoing petition to be served upon Mr. Charles D. Lancaster, Esq., by placing same in an envelope addressed to him at Suite 200, First Metropolitan Bank Building, 2201 Veterans Memorial Highway, Metairie, LA 70002, first class postage affixed thereto, and deposited same in a United States Post Office in New Orleans, Louisiana; and that all parties required to be served have been served.

JAY C. ZAINEY
Attorney for Petitioner

SWORN TO and SUBSCRIBED
before me, Notary Public,
this 15th day of July, 1981.

JAMES A. MC PHERSON--NOTARY
My Commission is Issued for Life.

APPENDIX A

Charlotte G. HILL

v.

Richard N. HILL, Jr.

No. 11492.

Court of Appeal of Louisiana,

Fourth Circuit

January 13, 1981.

Rehearing Denied March 16, 1981.

Before GARRISON, CHEHARDY and STOULIG, JJ.

Defendant, Richard N. Hill, Jr., appeals a summary judgment in favor of the plaintiff, Charlotte H. Hill, in the sum of $4,535.48, together with interest at the rate of 6% from October 11, 1974, un-

til paid and for all costs of the proceedings.

Mrs. Hill, a resident of the County of Macon, State of Illinois, filed a petition in the Parish of Jefferson, State of Louisiana, the domicile of the defendant, alleging that she was the judgment creditor of Mr. Hill by virtue of a judgment of the Circuit Court of the Sixth Judicial District of Macon County, Illinois, rendered on October 21, 1974 and made executory under the laws of the State of Illinois.

Attached to Mrs. Hill's petition was an authenticated copy of the Illinois judgment, which ordered, adjudged and decreed:

> "1. A judgment is entred for the amount of past due support in the amount of $4,092.00 and accumulated interest thereon through October 11, 1974, in the amount of $443.86 for a total of $4535.86.
>
> "2. That the Defendant-Respondent-Judgment Debtor, Richard N. Hill, Jr., is ordered to pay said sum within 30 days of the date hereof.

"3. That in the event that said Richard N. Hill, Jr., Defendant-Respondent-Judgment Debtor, does not pay said sum within said period, the Clerk on this Court is ordered to issue execution hereon."

We can find no merit in defendant's argument that since LSA-C.C. art 3538 bars arrearages of alimony by the prescription of three years, the trial court should have refused to recognize the Illinois judgment. This issue has been specifically addressed by the First Circuit in Swain v. Swain, 339 So.2d 453 (La.App. 1st Cir. 1976), wherein the court said at pages 455-456:

"The object of the plaintiff's suit was to annul portions of an obviously valid and final Florida judgment. However, it is axiomatic that a Louisiana court is powerlesls to annul the judgment of a sister state.

"A Louisiana court is also powerless to deny a Florida judgment the full faith and credit which is accorded to it by Article 4, Section 1, of the United States Constitution, unless the Florida court lacked jurisdiction over the parties or the subject matter involved in the controversy. Milliken v. Meyer, 311 U.S.

457 * * * (1941); Crichton v. Succession of Crichton, 232 So.2d 109 (La.-App. 2nd Cir. 1970), writs ref'd, 256 La. 274, 236 So.2d 39 (1970), U.S. certiorari denied, 400 U.S. 919 * * *, rehearing denied, 400 U.S. 1002 * * * (1971).

"On the facts of the record before us, the Florida court obviously had jurisdiction over both the parties and the subject matter, that is, the marriage that existed between the plaintiff and the defendant and the legal effects that flowed therefrom. * * *

"In view of the foregoing, the application of the full faith and credit clause to the instant case renders the courts of Louisiana powerless to deny the validity and effect of the Florida judgment.

* * * * * *

"The courts of Louisiana are powerless to inquire into the merits of the cause of action or the validity of the legal principles on which the Florida court based its decision. U.S. Constitution, Article 4, Section 1; Milliken, supra.

Similarly, since this court can find no evidence that the Illinois court lacked jurisdiction over the parties on the subject matter involved in this controversy, the full faith and credit clause of the

United States Constitution precludes our examination of the case on its merits.

For the reasons assigned, the district court judgment is affirmed.

AFFIRMED.

APPENDIX B

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

Clerk's Office, New Orleans

March 16, 1981

DEAR SIR:

REHEARING WAS THIS DAY REFUSED IN THE CASE ENTITLED HILL v. HILL, NO. 11492.

(STOULIG, J. is of the opinion the rehearing should be granted.)

Very truly yours,

MARJORIE R. CAMBRE, Clerk

APPENDIX C

SUPREME COURT OF THE STATE OF LOUISIANA

CHARLOTTE G. HILL

VS. NO. 81-C-1019

RICHARD N. HILL, JR.

IN RE: Richard N. Hill, Jr., applying for writ of Certiorari, or Review, to the Court of Appeal, Fourth Circuit, Parish of Jefferson, Number 11,492.

May 6, 1981.

Denied.

HTL

JADF

PFC

JLD

FAB

JCW

Supreme Court of Louisiana
May 6, 1981

s/Frans J. Labranche
Clerk of Court
For the Court